

DIVISION IV

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
ROBERT J. GLADWIN, Judge

CACR06-27

SEPTEMBER 13, 2006

CHARLES BROWN, JR.

APPELLANT

APPEAL FROM THE WHITE COUNTY
CIRCUIT COURT
[NO. CR 2005-274]

HON. ROBERT EDWARDS,
JUDGE

V.

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant Charles Brown, Jr., appeals his conviction for delivering cocaine. The appellant's sole point on appeal is that he was denied a fundamental constitutional right because the jury panel that convicted him included no persons of his race. We affirm.

The White County Sheriff's Department worked with a confidential informant who bought crack cocaine from appellant. Appellant was charged in an information with the crime of "delivery of a Schedule II Controlled Substance, namely cocaine." Appellant was brought to trial on October 12, 2005, and a jury was empaneled from a pool of fifty-four registered voters. After twelve jurors had been chosen and given the oath, the trial court called for a recess before testimony began. At that time, appellant objected to having no African-American men or women

on the jury panel. The judge overruled the objection, and the appellant was ultimately convicted.

The transcript states as follows:

MR. SCHMIDT (appellant's attorney): One other matter, your Honor. At the time that the panel – jury was empaneled, my client said that he felt that he could not get a fair trial due to the fact that this is not a trial among his peers, that there's not a representative of his race on the jury panel. And I want that noted as a matter of record.

THE COURT: Well, the – there was no motion to strike the jury panel and the Court believes that to be dispositive of whatever motion it is you're making here. This jury panel was picked in accordance with the Arkansas law. It is a panel randomly selected from the pool of registered voters. The Court did not excuse any African Americans from the jury panel, either at orientation or at any other time to my knowledge. I will acknowledge that in the 54 prospective jurors here this morning, there were no African Americans that I am aware of. But once again, the jury was selected according to law. No African Americans were excused from service by the Court and the defense did not make a motion to strike the panel prior to the jury being selected, which has occurred, and the Jury has now been sworn.

A trial court's decision to grant or deny a motion to quash a jury panel on the ground that it cannot be impartial will not be reversed on appeal absent a showing of a manifest abuse of that discretion. *Black v. State*, 50 Ark. App. 42, 901 S.W.2d 849 (1995) (citing *Gonzalez v. State*, 32 Ark. App. 10, 794 S.W.2d 620 (1990)). The Arkansas Supreme Court has held that if a party desires to challenge a jury panel, a motion to quash must be promptly made and it is too late if the jury has been empaneled and sworn. *Bailey v. State*, 255 Ark. 34, 498 S.W.2d 859 (1973) (citing *Carruthers v. Reed*, 102 F.2d 933 (8th Cir. 1939)).

In the instant case, the jury was empaneled and sworn before appellant voiced his objection, which was not in the form of a motion to quash. Consequently, the question of the validity of the constitution of the jury panel is not properly before us, and we do not address it.

Affirmed.

PITTMAN, C.J., AND GLOVER, J., agree.